

Internal Revenue Service

Department of the Treasury
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PLR-105126-08

Date:
July 30, 2008

LEGEND:

Taxpayer:

a:
b:

Dear :

We received a letter from your authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 59(e) of the Internal Revenue Code for the a and b taxable years. This letter responds to that request.

According to the information submitted, Taxpayer did not timely make the election under § 59(e) for the a and b taxable years. Taxpayer has made representations explaining why the election under § 59(e) was not timely made.

Section 59(e) provides an optional ten year write-off of certain tax preferences. Section 59(e)(4) provides that an election may be made under § 59(e)(1) with respect to any portion of any qualified expenditure.

Section 1.59-1(b)(1) provides that an election under § 59(e) can only be made by attaching a statement to the taxpayer's income tax return (or amended return) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins. The statement must be filed no later than the date prescribed by law for filing the taxpayer's original income tax return (including any extensions of time) for the taxable year in which the amortization of the qualified expenditures subject to the § 59(e) election begins.

Section 301.9100-1(c) provides that the Commissioner, in an exercise of discretion, may grant a reasonable extension of time under rules set forth in

§§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied with respect to the a and b taxable years. Therefore, an extension of time is granted, until 60 days from the date of this ruling, for making an election under § 59(e) for the a and b taxable years. Taxpayer may make the elections by attaching statements to amended returns for the a and b taxable years, or by submitting to the IRS Examination Team conducting the examination of the Taxpayer's income tax returns for the a and b taxable years statements that are treated as qualified amended returns and that contain the information required by the IRS Examination Team.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether the expenditures are qualified expenditures under § 59(e)(2).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be provided to the IRS Examination Team conducting the examination of the taxpayer's

income tax returns for the a and b taxable years when the adjustments discussed above are submitted to the examination team.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

cc: